

IN THE COURT OF COMMON PLEAS of PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT of PENNSYLVANIA

CIVIL TRIAL DIVISION

WILLIAM FREEMAN

Plaintiff

v.

WILLIAM BONNER, M.D., et al

Defendants

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JANUARY TERM, 1997

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No. 662

OPINION of the COURT

APRIL 20, 2000

GOODHEART, J.

This is the Plaintiff's appeal from my denial -- for lack of jurisdiction -- of the Plaintiff's Post-Trial Motion to Remove a Compulsory Nonsuit *Nunc pro Tunc*.

Due to its somewhat odd procedural posture, the facts of this case are almost irrelevant to this Opinion, but -- for the sake of context -- I will summarize them briefly before turning to the basis of my ruling.

BACKGROUND

The Plaintiff -- a plumber employed by the City of Philadelphia -- commenced this action on January 10, 1997, against the City, its workers' compensation benefits administrator, Comp Services, Inc., and William F. Bonner, M.D. In substance, the Plaintiff's Amended Complaint alleged that, in the course of his employment with the City, the Plaintiff had suffered "repetitive stress" injuries to both hands and wrists, that the City and/or Comp Services had referred him to Dr. Bonner for treatment, and that -- due to Dr. Bonner's refusal to authorize surgery -- his condition worsened, and the outcome of the surgery subsequently performed (by another

physician) was less satisfactory than would otherwise have been the case.

All claims against the City and Comp Services were dismissed on Motion for Summary Judgment, and the case proceeded to trial against Dr. Bonner alone¹.

Shortly before trial began, Dr. Bonner's attorney filed a Motion *in Limine*, seeking to preclude the Plaintiff's sole expert witness -- Dr. Scott Jaeger -- from testifying as to the standard of care applicable to Dr. Bonner's treatment of the Plaintiff, as to whether or not Dr. Bonner had breached it, and as to the existence of any causal link between care rendered by Dr. Bonner and the Plaintiff's condition, on the basis that Dr. Jaeger's reports contained only a narrative of the care that he rendered to the Plaintiff, and not any criticism of the care rendered by Dr. Bonner.

I granted the Motion *in Limine*, and -- unsurprisingly -- also granted the Defendant's Motion for a Compulsory Nonsuit at the close of the Plaintiff's case.

Plaintiff's counsel filed a timely Post-Trial Motion to Remove the Nonsuit, but did not promptly order the Notes of Testimony, and -- presumably for lack of the Notes -- did not file a supporting memorandum of law. More than 120 days passed, and on January 7, 2000, Dr. Bonner's attorney filed a Praecipe for Judgment, pursuant to Pennsylvania Rule of Civil Procedure 227.4(1)(b).

Notice of the entry of judgment was given to Plaintiff's counsel on the day of its entry, but Plaintiff's counsel failed to file a Notice of Appeal within thirty days, thus causing the judgment to become final and unappealable. The Defendant then filed a Praecipe to Discontinue on February 28, 2000.

¹ Though I did not rule on the Motion for Summary Judgment, it seems clear that the Workers' Compensation Act bars the Plaintiff's claims against the City and its benefits administrator, and that the same evidentiary deficiencies that ultimately led to the nonsuit would have resulted in dismissal of those claims, had they survived the Motion for Summary Judgment.

This evidently spurred the Plaintiff's counsel into action, as on March 1, 2000, she filed a Motion to Remove Non-Suit *Nunc Pro Tunc*. Because the record indicated that notice of the entry of judgment had been timely given to Plaintiff's counsel – and the Plaintiff's Motion to Remove Nonsuit *Nunc Pro Tunc* did not claim otherwise – I denied the Motion for lack of jurisdiction.

THE PROCEDURAL ISSUES

Though trial courts enjoy great discretion to entertain untimely post-trial motions, judgments entered pursuant to Rule 227.4(1)(b) are by the Rule's express terms unreviewable by the trial court. Had there been evidence to show that the judgment in this case resulted from fraud or a breakdown in the Court's operations, I would have exercised my inherent jurisdiction to grant relief, in much the same way that *nunc pro tunc* relief can allow the late filing of a Notice of Appeal in cases of fraud or breakdown in the Court's operations. Nixon v. Nixon, 329 Pa. 256; 198 A.2d 157 (1938); James F. Oakley, Inc. v. School District of Philadelphia, 464 Pa. 330; 346 A.2d 765 (1975).

Here, because judgment was entered against the Plaintiff, pursuant to Rule 227.4(1)(b), the Plaintiff's initial Motion to Remove the Nonsuit was automatically deemed denied. I lost jurisdiction over the matter at that time, and had no ability -- in the absence of fraud or judicial breakdown -- to grant post-trial relief *nunc pro tunc*.

For the same reasons, I also denied the Plaintiff's Motion for Reconsideration, by Order dated March 29, 2000.

I do feel obliged, however, to note my displeasure with Rule 227.4, a perhaps well-intentioned, but ultimately wrong-headed attempt to shorten post-trial delays. It is almost

impossible to write a meaningful post-trial brief without Notes of Testimony. Depending on the Court Reporter's workload, it can take a number of weeks² to receive those Notes. It is unreasonable to expect counsel to drop everything the moment the Notes arrive so that a brief can be prepared and filed immediately; the briefing schedule thus requires -- at a minimum -- an additional four to eight additional weeks. If a case presents complex or intensely record-dependent issues, it is easy for the 120-day period to run out before a decision is rendered.

Since trial courts are best positioned to correct trial errors, it seems counterproductive to deprive the trial court of that opportunity, even in the name of efficiency. Assuming that Notes of Testimony are ordered promptly, Rule 227.4 would strike a better balance if it simply established a briefing schedule that would be triggered automatically by the deposit of the Notes with the Prothonotary, and required the Court to act within a set number of days (perhaps ninety) thereafter. As the Rule now stands, the moving party can be prejudiced by late receipt of transcripts, through no fault of its own.

THE MERITS

Putting the procedural aspects of this case aside for a moment, I am firmly convinced that my initial decision to grant the Defendant's Motion *in Limine* was correct. That being so, the procedural imbroglio is reduced to much ado about very little – the Plaintiff would not have prevailed on the Motion to Remove Nonsuit, even with the finest supporting brief and the most skilled oral advocacy in the history of jurisprudence; thus, any post-trial lapse by his counsel was

² Though I realize that “daily copy” is available, I don't believe that a party should be penalized for not ordering it. Moreover, as the demand for “daily copy” rises, the speed advantage will necessarily disappear, as a Court Reporter can only produce a finite amount of work each day.

simply inconsequential.

CONCLUSION

For the reasons set forth above, the Plaintiff is not entitled to *nunc pro tunc* relief (and would not have been entitled to post-trial relief even if judgment had not been entered pursuant to Rule 227.4).

Therefore, the judgment in this case should be affirmed.

BY THE COURT :

Goodheart, J.